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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   ZERO CLOUD ONE INTELLIGENT  
9                   TECHNOLOGY (HANGZHOU) CO  
10                  LTD,

11                  Plaintiff,

12                  v.

13                  FLYING HELIBALL LLC; WORLD  
14                  TECH TOYS INC.,

15                  Defendants.

16                  CASE NO. 2:24-cv-01699-JNW  
17                  ORDER REQUESTING  
18                  SUPPLEMENTAL BRIEFING

19                  The Court raises this matter on its own accord to address outstanding issues  
20                  pertaining to the application of the first-to-file rule.

21                  On November 4, 2024, the Court ordered the parties to submit supplemental  
22                  briefing “regarding the optimal case management approach,” including “the  
23                  application, if any, of the first-to-file rule on this action.” Dkt. No. 21 at 20. The  
Court noted that “Zero Cloud’s likelihood of success on the merits hinges largely on  
whether Flying Heliball and World Tech Toys’ patent infringement assertion is in  
bad faith,” which is “linked to the issue of actual infringement, which is currently  
being litigated in the Central District of California.” *Id.* at 20.

1       The parties have since responded with supplemental briefing, Dkt. Nos. 27,  
2 29, and Defendants have moved to dismiss. Dkt. No. 28. Defendants argue that the  
3 Court should dismiss—or, in the alternative, transfer or stay—this case under the  
4 first-to-file rule. Dkt. Nos. 27 at 5-7; 28 at 10-13. Zero Cloud, on the other hand,  
5 devotes its supplemental brief almost entirely to the issue of preliminary injunctive  
6 relief and provides virtually no analysis of the first-to-file rule. *See* Dkt. No. 29. Zero  
7 Cloud “respectfully request[s] an opportunity to brief the first-to-file and other  
8 issues before ruling thereon, including briefing on the Court’s equitable discretion of  
9 whether to apply the first-filed principle in a given circumstance.” *Id.* at 2-3.

10      The first-to-file rule is designed to “serve the purpose of promoting efficiency”  
11 and “may be invoked when a complaint involving the same parties and issues has  
12 already been filed in another district.” *Alltrade, Inc. v. Uniweld Prod., Inc.*, 946 F.2d  
13 622, 625 (9th Cir. 1991) (cleaned up). In applying the rule, “a court analyzes three  
14 factors: chronology of the lawsuits, similarity of the parties, and similarity of the  
15 issues.” *Kohn L. Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th  
16 Cir. 2015). Courts make exceptions to the first-to-file rule in circumstances of bad  
17 faith, anticipatory suit, and forum-shopping. *Alltrade*, 946 F.2d at 628.

18      Here, there is no dispute over chronology: the infringement suit was filed  
19 first. *See* Dkt. No. 1-1 at 185-193. The Court therefore requests supplemental  
20 briefing on these questions:

- 21           • Given that Zero Cloud is not a party to the infringement suit, how should  
22 the Court evaluate the second factor—similarity of the parties?

- 1           • Given that the claims differ across the two suits, how should the Court  
2           consider the third factor—similarity of the issues?
- 3           • Does this case warrant an equitable exception to the first-to-file rule?
- 4           • Defendants argue that “the Central District of California provides an  
5           adequate forum with adequate remedies to Plaintiff.” *See, e.g.*, Dkt. No. 27  
6           at 3. Can Zero Cloud pursue Washington Patent Troll Prevention Act  
7           claims in the Central District of California? Can Zero Cloud pursue its  
8           sought-after preliminary injunctive relief in the Central District of  
9           California?

10          The Court ORDERS the parties to submit supplemental briefing, limited to  
11          SEVEN (7) pages, addressing these questions. The parties’ responses are due by  
12          this Friday, November 22, 2024, at 5:00 p.m.

13          It is so ORDERED.

14          Dated this 18th day of November, 2024.

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17          Jamal N. Whitehead  
18          United States District Judge  
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